

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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XING JIAN YU,

Movant,

**ORDER**

**No. 6:17-cv-06699-MAT**

-vs-

JEFF SESSIONS, Attorney General of the United States; THOMAS P. BROPHY, Field Office Director for Detention and Removal, Buffalo Field Office, Bureau of Immigration and Customs Enforcement; Department of Homeland Security; and JOE KOSON, Facility Director, Buffalo Federal Detention Facility,

Respondents.

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**I. Background**

Proceeding pro se, Xing Jian Yu ("Yu" or "Petitioner") has filed a petition (Docket No. 1) for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and has paid the \$5.00 filing fee.

Yu, a native and citizen of China, was ordered removed from the United States to China on March 21, 2017, by a Immigration Judge. Pending his removal, Yu has been detained at the Buffalo Federal Detention Facility. Yu asserts he is entitled to habeas relief because his detention violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in Zadvydas v. Davis, 533 U.S. 678 (2001), as well as the Due Process Clause of the Fifth Amendment of the United States Constitution.

## **II. Order**

Within forty-five (45) days of the date of this Order, Respondents must file and serve an answer responding to the allegations in the petition as well as file any documents relevant to the Court's consideration of the petition. Respondents must also file and serve a memorandum of law addressing each of the issues raised in the petition with citations to supporting authority and applicable sections of the Immigration and Nationality Act. In lieu of an answer, Respondents may file a motion to dismiss the petition with appropriate exhibits demonstrating that an answer to the petition is unnecessary. Petitioner will have twenty-five (25) days after he receives Respondents' answer or motion to dismiss to file a written response.

The Clerk of Court will serve a copy of the petition and this order via a Notice of Electronic Filing to the United States Attorney's Office, Western District of New York, at [USANYW-Immigration-Habeas@usdoj.gov](mailto:USANYW-Immigration-Habeas@usdoj.gov). Petitioner must forward a copy of all future papers and correspondence to the attorney who appears for Respondents.

**SO ORDERED**

*s/ Michael A. Telesca*

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HONORABLE MICHAEL A. TELESCA  
United States District Judge

DATED: August 16, 2019  
Rochester, New York